

**APPENDIX B-1**

**STANDARD TERMS AND CONDITIONS FOR**

**(1) COST SHARING;**  
**(2) COST REIMBURSEMENT; AND,**  
**(3) COST PLUS FIXED FEE**

**SUBCONTRACTS**

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## CLAUSES

### **CLAUSE 1 - PROHIBITION OF ASSIGNMENT (SPECIAL) (APR 1997)**

- A. Neither this subcontract nor any interest therein nor claim thereunder shall be assigned or transferred by the Subcontractor except as expressly authorized in writing by the NREL Subcontract Administrator.
- B. When directed by DOE, the NREL Division of Midwest Research Institute may assign all its rights and obligations under this subcontract to DOE or its designee.

### **CLAUSE 2 - DISPUTES (SPECIAL) (APR 1997)**

- A. The parties agree that the appropriate forum for resolution of any dispute or claim pertaining to this subcontract shall be a court of competent jurisdiction as follows:
  - 1. Subject to paragraph (A)(2) of this clause, any such litigation shall be brought and prosecuted exclusively in Federal District Court; with venue in the United States District Court of Colorado in Denver, Colorado.
  - 2. Provided, however, that in the event that the requirements for jurisdiction in any Federal District Court are not presented, such litigation shall be brought in a court of competent jurisdiction in the county of Jefferson and State of Colorado.
- B. Any substantive issue of law in such dispute, claim, or litigation shall be determined in accordance with the body of applicable Federal law relating to the interpretation and application of clauses derived from Federal Acquisition Regulations. If there is no applicable Federal law, the law of the State of Colorado shall apply in the determination of such issues. Nothing in this clause shall grant to the Subcontractor by implication any statutory rights or remedies not expressly set forth in this subcontract.
- C. There shall be no interruption in the prosecution of the work, and the Subcontractor shall proceed diligently with the performance of this subcontract pending final resolution of any dispute, claim, or litigation arising under or related to this subcontract between the parties hereto or between the Subcontractor and lower-tier subcontractors or suppliers.
- D. The Contract Disputes Act of 1978 (41 U.S.C. Sections 601-613) shall not apply to this subcontract; provided, however, that nothing in this clause shall prohibit NREL, in its sole discretion, from sponsoring a claim of the Subcontractor for resolution under the provision of its prime contract with DOE. In the event that NREL so sponsors a claim at the request of the Subcontractor, the Subcontractor shall be bound by the decision of the cognizant DOE Contracting Officer to the same extent and in the same manner as NREL.
- E. Any disputes relative to intellectual property matters will be governed by other provisions of this subcontract.

**CLAUSE 3 - YEAR 2000 CERTIFICATION AND WARRANTY OF INFORMATION TECHNOLOGY PRODUCTS AND SERVICES (SPECIAL)(FEB 1999)**

*(Applies to subcontracts for information technology products or services)*

**A. Definitions**

1. "Year 2000 Compliance," as used in this clause, means that the information technology products and services delivered or developed under this subcontract accurately process date/time data from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, and leap year calculations, to the extent that other information technology, used in combination with the information technology being delivered or developed under this subcontract, properly exchanges date/time data with it.
2. "Information technology products and services" as used in this clause, include, but are not limited to, hardware, software, and/or firmware and embedded systems or any other electro-mechanical or processor-based systems or services.
3. "Date/time data," as used in this clause, includes but is not limited to, calculating, comparing, and sequencing.

**B. Certification**

The delivery or development of information technology products or services by the Subcontractor/Supplier shall constitute constructive certification that the information technology products or services under this subcontract demonstrate Year 2000 Compliance.

**C. Warranty**

The Subcontractor/Supplier warrants that each commercial or noncommercial information technology product or service delivered or developed under this subcontract is Year 2000 Compliant. If the subcontract requires that specific information technology products or services must perform as a system in accordance with the foregoing warranty, then this warranty shall apply to those products or services as a system.

**D. Duration and Remedies**

The duration of this warranty and the remedies available to NREL/Government for breach of this warranty shall be as defined in, and subject to: 1) the terms and limitations of the general warranty provisions of this subcontract; or, 2) the terms and limitations of the Subcontractor's/Supplier's standard commercial warranty or warranties contained in this subcontract.

Notwithstanding any provision to the contrary in such warranty provision(s), or in the absence of any such warranty provision(s), the remedies available to NREL/Government under this Year 2000 Compliance warranty shall include repair or replacement, at no additional cost to NREL/Government, of any information technology product or service where noncompliance is discovered and made known to the Subcontractor/Supplier in writing within ninety (90) days after acceptance. Nothing in this warranty shall be construed to limit any rights or remedies NREL/Government may otherwise have under this subcontract with respect to defects other than Year 2000 compliance.

E. Subcontractor/Supplier as Distributor

If the Subcontractor/Supplier is a distributor of technology information products obtained from third party manufacturers, the Subcontractor/Supplier agrees to obtain from the third party manufacturers certifications and warranties that substantially conform to the requirements of this clause.

F. Lower-tier Subcontracts

The Subcontractor/Supplier agrees to insert terms that conform substantially to the language of this clause, including this paragraph F, in all lower-tier subcontracts under this subcontract.

**CLAUSE 4 - DEFINITIONS (SPECIAL) (JUL 1998)**

***Derived from FAR 52.202-1 (OCT 1995)***

- A. "Head of the agency" also called "agency head") or "Secretary" means the Secretary (or Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, including any deputy or assistant chief official of the agency; and the term "authorized representative" means any person, persons, or board (other than the Contracting Officer) authorized to act for the head of the agency or Secretary.
- B. "Commercial component" means any component that is a commercial item.
- C. "Commercial item" means --
1. Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that --
    - (i) Has been sold, leased, or licensed to the general public; or
    - (ii) Has been offered for sale, lease, or license to the general public;
  2. Any item that evolved from an item described in paragraph (C)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a government solicitation;
  3. Any item that would satisfy a criterion expressed in paragraphs (C)(1) or (C)(2) of this clause, but for --
    - (i) Modifications of a type customarily available in the commercial marketplace; or
    - (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the

modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

4. Any combination of items meeting the requirements of paragraphs (C)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;
  5. Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (C)(1), (2), (3), or (4) of this clause, and if the source of such services --
    - (i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and
    - (ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;
  6. Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;
  7. Any item, combination of items, or service referred to in subparagraphs (C)(1) through (C)(6), notwithstanding the fact that the item, combination or items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of the subcontractor; or
  8. A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and Local Governments.
- D. "Component" means any item supplied to the Federal Government as part of an end item or of another component.
- E. "Nondevelopmental item" means --
1. Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local Government, or a foreign Government with which the United States has a mutual defense cooperation agreement;
  2. Any item described in paragraph (E)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or
  3. Any item of supply being produced that does not meet the requirements of paragraph (E)(1) or (E)(2) solely because the item is not yet in use.

- F. "DOE Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the DOE Contracting Officer acting within the limits of their authority as delegated by the DOE Contracting Officer.
- G. Except as otherwise provided in this subcontract, the term "lower-tier subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this subcontract.
- H. The term "DOE" means the Department of Energy and "FERC" means the Federal Energy Regulatory Commission.
- I. The term "NREL" means the National Renewable Energy Laboratory Division of the Midwest Research Institute, a not-for-profit Missouri Corporation, and includes its successors and assigns of the NREL Division of Midwest Research Institute. The NREL facility is a Department of Energy-owned national laboratory, operated and managed under Contract No. DE-AC36-98-GO10337 by the NREL Division of the Midwest Research Institute.
- J. The term "Subcontractor" as used herein includes lower-tier subcontractors, independent contractors, and all other classes of persons performing any type of work under this subcontract.

**CLAUSE 5 - RESTRICTIONS ON LOWER-TIER SUBCONTRACTOR SALES  
TO NREL/GOVERNMENT (JUL 1995)**

*Derived from FAR 52.203-6*

*(Applies to subcontracts exceeding \$100,000)*

- A. Except as provided in (B) of this clause, the Subcontractor shall not enter into any agreement with an actual or prospective lower-tier subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such lower-tier subcontractors directly to NREL/Government of any item or process (including computer software) made or furnished by the lower-tier subcontractor under this subcontract or under any follow-on production subcontract.
- B. The prohibition in (A) of this clause does not preclude the Subcontractor from asserting rights that are otherwise authorized by law or regulation.
- C. The Subcontractor agrees to incorporate the substance of this clause, including this paragraph (C), in all lower-tier subcontracts under this subcontract which exceed \$100,000.

**CLAUSE 6 - ANTI-KICKBACK PROCEDURES (JUL 1995)**

*Derived from FAR 52.203-7 (FD)*

*(Applies to subcontracts exceeding \$100,000)*

- A. Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any Prime Contractor, Prime Contractor employee, Subcontractor, or Subcontractor employee for the purpose

of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a Prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a Prime Contractor or Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the Prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the Prime Contractor or a higher-tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a Subcontractor.

- B. The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from --
1. Providing or attempting to provide or offering to provide any kickback;
  2. Soliciting, accepting, or attempting to accept any kickback; or
  3. Including, directly or indirectly, the amount of any kickback in the contract price charged by a Prime Contractor to the United States or in the contract price charged by a Subcontractor to a Prime Contractor or higher-tier subcontractor.
- C.
1. The Subcontractor shall have in place and follow reasonable procedures designed to prevent and detect violations described in paragraph (B) of this clause in its own operations and direct business relationships.
  2. When the Subcontractor has reasonable grounds to believe that a violation described in paragraph (B) of this clause may have occurred, the Subcontractor shall promptly report in writing the possible violation. Such reports shall be made to the DOE inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

3. The Subcontractor shall cooperate fully with any Federal agency and/or NREL investigating a possible violation described in paragraph (B) of this clause.
4. The DOE Contracting Officer may --
  - (i) Offset the amount of the kickback against any monies owed by NREL under this subcontract and/or
  - (ii) Direct that the Subcontractor withhold from sums owed the lower-tier subcontractor the amount of the kickback. The DOE Contracting Officer may order that monies withheld under subdivision (C)(4)(ii) of this clause be paid over to NREL or the Government unless NREL or the Government has already offset those monies under subdivision (C)(4)(i) of this clause. In either case, the Subcontractor shall notify the NREL Subcontract Administrator when the monies are withheld.
5. The Subcontractor agrees to incorporate the substance of this clause, including subparagraph (C)(5) but excepting subparagraph (C)(1), in all lower-tier subcontracts under this subcontract which exceed \$100,000.

**CLAUSE 7 - LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)**

***Derived from FAR 52-203-12***

***(Applies to subcontracts exceeding \$100,000)***

A. Definitions.

"Agency," as used in this clause, means executive agency as defined in FAR 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

1. The awarding of any Federal contract.
2. The making of any Federal grant.
3. The making of any Federal loan.
4. The entering into of any cooperative agreement.
5. The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local Government," as used in this clause, means a unit of Government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a Local Government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

1. An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
2. A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
3. A special Government employee, as defined in section 202, Title 18, United States Code.
4. An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and Local Government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Subcontractor and all lower-tier subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least one hundred and thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than one

hundred and thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for one hundred and thirty (130) working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

B. Prohibitions.

1. Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
2. The Act also requires Subcontractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.
3. The prohibitions of the Act do not apply under the following conditions:
  - (i) Agency and legislative liaison by own employees.
    - a. The prohibition on the use of appropriated funds, in subparagraph (B)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.
    - b. For purposes of subdivision (B)(3)(i)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.
    - c. The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

1. Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.
  2. Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
- d. The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action --
1. Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
  2. Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
  3. Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub.L.95-507, and subsequent amendments.
- e. Only those services expressly authorized by subdivision (B)(3)(i)(a) of this clause are permitted under this clause.
- (ii) Professional and technical services.
- a. The prohibition on the use of appropriated funds, in subparagraph (B)(1) of this clause, does not apply in the case of --
1. A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
  2. Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if

the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

- b. For purposes of subdivision (B)(3)(ii)(a) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.
- c. Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.
- d. Only those services expressly authorized by subdivisions (B)(3)(ii)(a)(1) and (2) of this clause are permitted under this clause.

- e. The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

C. Disclosure.

1. The Subcontractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (B)(1) of this clause, if paid for with appropriated funds.
2. The Subcontractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (C)(1) of this clause. An event that materially affects the accuracy of the information reported includes--
  - (i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
  - (ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
  - (iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
3. The Subcontractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.
4. All lower-tier subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the Subcontractor. The Subcontractor shall submit all disclosures to the NREL Subcontract Administrator at the end of the calendar quarter in which the disclosure form is submitted by the Subcontractor. Each lower-tier subcontractor certification shall be retained in the subcontract file of the awarding Subcontractor.

D. Agreement.

The Subcontractor agrees not to make any payment prohibited by this clause.

E. Penalties.

1. Any person who makes an expenditure prohibited under paragraph (A) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (B) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
2. Subcontractors may rely without liability on the representation made by their lower-tier subcontractors in the certification and disclosure form.

F. Cost allowability.

Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

**CLAUSE 8 - AUDIT AND RECORDS -- NEGOTIATION (JUN 1999)**

***Derived from FAR 52.215-2 (FD)***

***(Applies to subcontracts exceeding \$100,000) (Use Alternate II of this clause for Cost-reimbursement subcontracts with State and Local Governments, educational institutions, and other nonprofit organizations)***

- A. As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are written form, in the form of computer data, or in any other form.

B. Examination of Costs

If this a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable subcontract, or any combination of these, the Subcontractor shall maintain and the DOE Contracting Officer, or an authorized representative of the DOE Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this subcontract. This right of examination shall include inspection at all reasonable times of the Subcontractor's plants, or part of them, engaged in performing the subcontract.

C. Cost or pricing data

If the Subcontractor has been required to submit cost or pricing data in connection with any pricing action relating to this subcontract, the DOE Contracting Officer, or an authorized representative of the DOE Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Subcontractor's records, including computation and projections, related to --

1. The proposal for the subcontract, lower-tier subcontract, or modification;
2. The discussions conducted on the proposal(s), including those related to negotiating;
3. Pricing of the subcontract, lower-tier subcontract, or modification; or
4. Performance of the subcontract, lower-tier subcontract, or modification.

D. Comptroller General

1. The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Subcontractor's directly pertinent records involving transactions related to this subcontract or a lower-tier subcontract hereunder.
2. This paragraph may not be construed to require the Subcontractor or lower-tier subcontractor to create or maintain any record that the Subcontractor or lower-tier subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

E. Reports

If the Subcontractor is required to furnish cost, funding, or performance reports, the DOE Contracting Officer or any authorized representative of the DOE Contracting Officer, shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating

--

1. The effectiveness of the Subcontractor's policies and procedures to produce data compatible with the objectives of these reports; and
2. The data reported.

F. Availability

The Subcontractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (A), (B), (C), (D), and (E) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this subcontract or for any shorter period specified in Subpart 4.7, Subcontractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this subcontract. In addition--

1. If this subcontract is completely or partially terminated, the records relating to the work terminated shall be made available for three (3) years after any resulting final termination settlement; and
2. Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this subcontract shall be made available until such appeals, litigation, or claims are finally resolved.

- G. The Subcontractor shall insert a clause containing all the terms of this clause, including this paragraph (G), in all lower-tier subcontracts under this subcontract that exceed the simplified acquisition threshold, and --
1. That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
  2. For which cost or pricing data are required; or
  3. That require the lower-tier subcontractor to furnish reports as discussed in paragraph (E) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the DOE Contracting Officer or NREL Subcontract Administrator under the Government prime contract.

***Alternate II (JUN 1999)***

***(For Cost-reimbursement subcontracts with State and Local Governments, educational institutions, and other non-profit organizations, the following paragraph (H) shall be added.)***

- H. The provisions of OMB Circular No. A-133, "Audits of States, Local Governments, and Non-profit Organizations," apply to this subcontract.

**CLAUSE 9 - ALLOWABLE COST AND PAYMENT (APR 1998)**

***Derived from FAR 52.216-7***

***(For cost reimbursement subcontracts) (For educational institutions, substitute subpart 31.3; For State and Local Governments, substitute subpart 31.6; For other non-profit organizations, substitute subpart 31.7. See FAR 16.307(a))***

- A. Invoicing.

NREL shall make payments to the Subcontractor when requested as work progresses, but (except for small business concerns) not more often than once every two (2) weeks, in amounts determined to be allowable by the NREL Subcontract Administrator in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this subcontract and the terms of this subcontract. The Subcontractor may submit to an authorized representative of the NREL Subcontract Administrator, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this subcontract.

- B. Reimbursing costs.

1. For the purpose of reimbursing allowable costs (except as provided in subparagraph (B)(2) of this section, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only --

- (i) Those recorded costs that, at the time of the request for reimbursement, the Subcontractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the subcontract;
  - (ii) When the Subcontractor is not delinquent in paying costs of subcontract performance in the ordinary course of business, costs incurred, but not necessarily paid, for --
    - (a) Materials issued from the Subcontractor's inventory and placed in the production process for use on the subcontract;
    - (b) Direct labor;
    - (c) Direct travel;
    - (d) Other direct in-house costs; and
    - (e) Properly allocable and allowable indirect costs, as shown in the records maintained by the Subcontractor for purposes of obtaining reimbursement under Government contracts or subcontracts; and
  - (iii) The amount of progress and other payments that have been paid by cash, check or other form of payment to the Subcontractor's lower-tier subcontractors under similar cost standards.
2. Subcontractor contributions to any pension or other post retirement benefit, profit-sharing, or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes; provided, that the Subcontractor pays the contribution to the fund within thirty (30) days after the close of the period covered. Payments made thirty (30) days or more after the close of a period shall not be included until the Subcontractor actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the Subcontractor actually makes the payment.
  3. Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (G) of this clause, allowable indirect costs under this subcontract shall be obtained by applying indirect costs rates established in accordance with paragraph (D) of this clause.
  4. Any statements in specifications or other documents incorporated in this subcontract by reference designating performance of services or furnishing of materials at the Subcontractor's expense or at no cost to NREL shall be disregarded for purposes of cost-reimbursement under this clause.

C. Small business concerns.

A small business concern may be paid more often than every two (2) weeks and may invoice and be paid for recorded costs for items or services purchased directly for the subcontract, even though the concern has not yet paid for those items or services.

D. Final indirect costs rates.

1. Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.
2.
  - i. The Subcontractor shall submit an adequate final indirect cost rate proposal to the NREL Subcontract Administrator (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Subcontractor and granted in writing by the NREL Subcontract Administrator. The Subcontractor shall support its proposal with adequate supporting data.
  - ii. The proposed rates shall be based on the Subcontractor's actual cost experience for that period. The appropriate Government representative or NREL Subcontract Administrator and the Subcontractor shall establish the final indirect cost rates as promptly as practical after receipt of the Subcontractor's proposal.
3. The Subcontractor and the appropriate Government representative or NREL Subcontract Administrator shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify
  - (i) The agreed-upon final annual indirect cost rates,
  - (ii) The bases to which the rates apply,
  - (iii) The periods for which the rates apply,
  - (iv) Any specific indirect cost items treated as direct costs in the settlement, and
  - (v) The affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract/subcontract obligation, or specific cost allowance or disallowance provided for in this subcontract. The understanding is incorporated into this subcontract upon execution.
4. Within one hundred and twenty (120) days after settlement of the final indirect cost rates covering the year in which this subcontract is physically complete (or longer, if approved in writing by the NREL Subcontract Administrator), the Subcontractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.
5. Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

E. Billing rates.

Until final annual indirect cost rates are established for any period, NREL shall reimburse the Subcontractor at billing rates established by the NREL Subcontract Administrator, or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates --

1. Shall be the anticipated final rates; and
2. May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

F. Quick-closeout procedures.

Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

G. Audit.

At any time or times before final payment, the NREL Subcontract Administrator may have the Subcontractor's invoices or vouchers and statements of cost audited. Any payment may be

1. Reduced by amounts found by the NREL Subcontract Administrator not to constitute allowable costs; or
2. Adjusted for prior overpayments or underpayments.

H. Final payment.

1. Upon approval of a completion invoice or voucher submitted by the Subcontractor in accordance with paragraph (D)(4) of this clause, and upon the Subcontractor's compliance with all terms of the subcontract, NREL shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
2. The Subcontractor shall pay to NREL any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Subcontractor or any assignee under this subcontract, to the extent that those amounts are properly allocable to costs for which the Subcontractor has been reimbursed by NREL. Reasonable expenses incurred by the Subcontractor for securing refunds, rebates, credits, or other amount shall be allowable costs if approved by the NREL Subcontract Administrator. Before final payment under this subcontract, the Subcontractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver --
  - (i) An assignment to NREL, in form and substance satisfactory to the NREL Subcontract Administrator, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Subcontractor has been reimbursed by NREL under this subcontract; and
  - (ii) A release discharging NREL/Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except --
    - (a) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

- (b) Claims (including reasonable incidental expenses) based upon liabilities of the Subcontractor to third parties arising out of the performance of this subcontract; **provided**, that the claims are not known to the Subcontractor on the date of the execution of the release, and that the Subcontractor gives notice of the claims in writing to the NREL Subcontract Administrator within 6 years following the release date or notice of final payment date, whichever is earlier; and
- (c) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Subcontractor under the patent clauses of this subcontract, excluding, however, any expenses arising from the Subcontractor's indemnification of NREL/Government against patent liability.

**CLAUSE 10 - FIXED FEE (MAR 1997)**

*Derived from FAR 52.216-8*

*(Applies to cost plus fixed fee subcontracts)*

- A. NREL shall pay the Subcontractor for performing this subcontract the fixed fee specified in the Schedule.
- B. Payment of the fixed fee shall be made as specified in the Schedule; **provided**, that after payment of eighty five (85) percent of the fixed fee, the NREL Subcontract Administrator may withhold further payment of fee until a reserve is set aside in an amount that the NREL Subcontract Administrator considers necessary to protect NREL's/Government's interest. This reserve shall not exceed 15 percent of the total fixed fee or \$100,000, whichever is less. The NREL Subcontract Administrator shall release seventy five (75) percent of all fee withholds under this subcontract after receipt of the certified final indirect cost rates proposal covering the year of physical completion of this subcontract, **provided** the Subcontractor has satisfied all other subcontract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The NREL Subcontract Administrator may release up to ninety (90) percent of the fee withheld under this subcontract based on the Subcontractor's past performance related to the submission and settlement of final indirect cost rate proposals.

**CLAUSE 11 - COST SUBCONTRACT - NO FEE (APR 1984)**

*Derived from FAR 52.216-11*

*(Applies to cost reimbursement subcontracts)*

- A. NREL shall not pay the Subcontractor a fee for performing this subcontract.
- B. After payment of eighty (80) percent of the total estimated cost shown in the Schedule, the NREL Subcontract Administrator may withhold further payment of allowable cost until a reserve is set aside in an amount that the NREL Subcontract Administrator considers necessary to protect NREL's/Government's interest. This reserve shall not exceed one percent of the total estimated cost shown in the Schedule or \$100,000 whichever is less.

**CLAUSE 12 - COST-SHARING SUBCONTRACT--NO FEE (APR 1984)**

*Derived from FAR 52.216-12*

*(Applies to cost sharing subcontracts)*

- A. NREL shall not pay to the Subcontractor a fee for performing this subcontract.
- B. After paying 80 percent of NREL's share of the total estimated cost of performance shown in the Schedule, the NREL Subcontract Administrator may withhold further payment of allowable cost until a

reserve is set aside in an amount that the NREL Subcontract Administrator considers necessary to protect NREL's/Government's interest. This reserve shall not exceed one percent of NREL's share of the total estimated cost shown in the Schedule or \$100,000, whichever is less.

### **CLAUSE 13 - PREDETERMINED INDIRECT COST RATES (APR 1998)**

***Derived from FAR 52.216-15***

***(Applies to cost reimbursement research and development subcontracts with educational institutions when predetermined indirect cost rates are used)***

- A. Notwithstanding the Allowable Cost and Payment clause of this subcontract, the allowable indirect costs under this subcontract shall be obtained by applying predetermined indirect cost rates to bases agreed upon by the parties as specified below.
- B.
  - 1. The Subcontractor shall submit an adequate final indirect cost rate proposal to the NREL Subcontract Administrator (or cognizant Federal agency official) and auditor within the six (6)-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Subcontractor and granted in writing by the NREL Subcontract Administrator. The Subcontractor shall support its proposal with adequate supporting data.
  - 2. The proposed rates shall be based on the Subcontractor's actual cost experience for that period. The appropriate Government representative and the NREL Subcontract Administrator shall establish the final indirect cost rates as promptly as practical after receipt of the Subcontractor's proposal.
- C. Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with FAR Subpart 31.3 in effect on the date of this subcontract.
- D. Predetermined rate agreements in effect on the date of this subcontract shall be incorporated into the subcontract Schedule. The NREL Subcontract Administrator (or cognizant Federal agency official) and Subcontractor shall negotiate rates for subsequent periods and execute a written indirect cost rate agreement setting forth the results. The agreement shall specify--
  - 1. The agreed-upon predetermined indirect cost rates,
  - 2. The bases to which the rates apply,
  - 3. The period for which the rates apply, and
  - 4. The specific items treated as direct costs or any changes in the items previously agreed to be direct costs.

The indirect cost rate agreement shall not change any monetary ceiling, subcontract obligation, or specific cost allowance or disallowance provided for in this subcontract. The agreement is incorporated into this subcontract upon execution.

- E. Pending establishment of predetermined indirect cost rates for any fiscal year (or other period agreed to by the parties), the Subcontractor shall be reimbursed either at the rates fixed for the previous fiscal year (or other period) or at billing rates acceptable to the NREL Subcontract Administrator (or cognizant Federal agency official), subject to appropriate adjustment when the final rates for that period are established.
- F. Any failure by the parties to agree on any predetermined indirect cost rates under this clause shall not be considered a dispute within the meaning of the Disputes clause. If for any fiscal year (or other period specified in the Schedule) the parties fail to agree to predetermined indirect cost rates, the allowable indirect costs shall be obtained by applying final indirect cost rates established in accordance with the Allowable Cost and Payment clause.
- G. Allowable indirect costs for the period from the beginning of performance until the end of the Subcontractor's fiscal year (or other period specified in the Schedule) shall be obtained using the predetermined indirect cost rates and the bases shown in the Schedule.

**CLAUSE 14 - UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 1999)**

***Derived from FAR 52.219-8 (FD)***

***(Applies to subcontracts exceeding \$100,000)***

- A. It is the policy of the United States that small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including subcontracts and lower-tier subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its Prime Contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their lower-tier subcontracts with small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women.
- B. The Subcontractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Subcontractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Subcontractor's compliance with this clause.
- C. Definitions.

As used in this subcontract--

- 1. "Small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.
- 2. "HUBZone small business concern" means a small business concern that appear on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

3. "Small business concern owned and controlled by socially and economically disadvantaged individuals" means an offeror that represents, as part of its offer, that-
    - (i) It has received certification as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B;
    - (ii) No material change in disadvantaged ownership and control has occurred since its certification;
    - (iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
    - (iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-NET).
  4. "Small business concern owned and controlled by women" means a small business concern --
    - (i) Which is at least fifty one (51) percent owned by one or more women, or, in the case of any publicly owned business, at least fifty one (51) percent of the stock of which is owned by one or more women; and
    - (ii) Whose management and daily business operations are controlled by one or more women; and
- D. Subcontractors acting in good faith may rely on written representations by their lower-tier subcontractors regarding their status as a small business concern, a HUBZone small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals or a small business concern owned and controlled by women.

**CLAUSE 15 - PAYMENT FOR OVERTIME PREMIUMS (JUL 1990)**

***Derived from FAR 52.222-2***

***(Applies to cost reimbursement subcontracts exceeding \$100,000)***

- A. The use of overtime is authorized under this subcontract if the overtime premium does not exceed \* \_\_\_\_\_ or the overtime premium is paid for work --
  1. Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;
  2. By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

3. To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or
  4. That will result in lower overall costs to NREL/Government.
- B. Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for contract completion and shall --
1. Identify the work unit; e.g., department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the NREL Subcontract Administrator to evaluate the necessity for the overtime;
  2. Demonstrate the effect that denial of the request will have on the subcontract delivery or performance schedule;
  3. Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government contracts, together with identification of each affected subcontract; and
  4. Provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

\* *Insert either "zero" or the dollar amount agreed to during negotiations. The inserted figure does not apply to the exceptions in subparagraph (A)(1) through (A)(4) of the clause.*

**CLAUSE 16 - CONTRACT WORK HOURS AND SAFETY STANDARDS ACT --  
OVERTIME COMPENSATION (JUL 1995)**

*Derived from FAR 52.222-4 (FD)*

*(Applies to subcontracts exceeding \$100,000 that require or involve the employment of laborers or mechanics)*

A. Overtime requirements.

No Subcontractor or lower-tier subcontractor contracting for any part of the subcontract work which may require or involve the employment of laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1 ½ times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages.

In the event of any violation of the provisions set forth in paragraph (A) of this clause, the Subcontractor and any lower-tier subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Subcontractor and lower-tier subcontractor shall be liable to the United States (in the case of work done under subcontract for the District of Columbia or a territory, to such District or to such territory), and/or NREL, for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (A) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to

work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (A) of this clause.

C. Withholding for unpaid wages and liquidated damages.

The NREL Subcontract Administrator shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Subcontractor or lower-tier subcontractor under any such subcontract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Subcontractor or lower-tier subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (B) of this clause.

D. Payrolls and basic records.

1. The Subcontractor or lower-tier subcontractor shall maintain payrolls and basic payroll records during the course of subcontract work and shall preserve them for a period of three (3) years from the completion of the subcontract for all laborers and mechanics working on the subcontract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.
2. The records to be maintained under paragraph (D)(1) of this clause shall be made available by the Subcontractor or lower-tier subcontractor for inspection, copying, or transcription by authorized representatives of Department of Energy, NREL, or the Department of Labor. The Subcontractor or lower-tier subcontractor shall permit such representatives to interview employees during working hours on the job.

E. Lower-tier Subcontracts.

The Subcontractor or lower-tier subcontractor shall insert in any lower-tier subcontracts exceeding \$100,000 the provisions set forth in paragraphs (A) through (E) of this clause and also a clause requiring the lower-tier subcontractors to include these provisions in any lower-tier subcontracts. The Subcontractor shall be responsible for compliance by any lower-tier subcontractor with the provisions set forth in paragraphs (A) through (E) of this clause.

**CLAUSE 17 - WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996)**

***Derived from FAR 52.222-20***

***(Applies to subcontracts for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000)***

If this subcontract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C.35-45), the following terms and conditions apply:

(a) All stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

(b) All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C.40).

**CLAUSE - EQUAL OPPORTUNITY (FEB 1999)**

***Derived from FAR 52.222-26 (FD)***

- A. If, during any 12-month period (including the twelve (12) months preceding the award of this subcontract), the Subcontractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Subcontractor shall comply with subparagraphs B (1) through (11) below. Upon request, the Subcontractor shall provide information necessary to determine the applicability of this clause.
- B. During performance of this subcontract, the Subcontractor agrees as follows:
1. The Subcontractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Subcontractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.
  2. The Subcontractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to,
    - (i) Employment,
    - (ii) Upgrading,
    - (iii) Demotion,
    - (iv) Transfer,
    - (v) Recruitment or recruitment advertising,
    - (vi) Layoff or termination,
    - (vii) Rates of pay or other forms of compensation, and
    - (viii) Selection for training, including apprenticeship.
  3. The Subcontractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the NREL Subcontract Administrator that explain this clause.
  4. The Subcontractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
  5. The Subcontractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by

the NREL Subcontract Administrator advising the labor union or workers' representative of the Subcontractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

6. The Subcontractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
  7. The Subcontractor shall furnish to NREL all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The subcontractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Subcontractor has filed within the 12 months preceding the date of contract award, the subcontractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.
  8. The Subcontractor shall permit access to its premises, during normal business hours, by NREL/Government or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Subcontractor shall permit NREL/Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.
  9. If the OFCCP determines that the Subcontractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Subcontractor may be declared ineligible for further NREL subcontracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Subcontractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.
  10. The Subcontractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every lower-tier subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each lower-tier subcontractor or vendor.
  11. The Subcontractor shall take such action with respect to any lower-tier subcontract or purchase order as the NREL subcontract administrator may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Subcontractor becomes involved in, or is threatened with, litigation with a lower-tier subcontractor or vendor as a result of any direction, the Subcontractor may request the United States to enter into the litigation to protect the interests of the United States.
- C. Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1

**CLAUSE 19 - AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS  
OF THE VIETNAM ERA (APR 1998)**  
***Derived from FAR 52.222-35 (FD)***  
***(Applies to subcontracts exceeding \$10,000)***

- A. Definitions. As used in this clause --

"All employment openings" includes all positions except executive and top management, those positions that will be filled from within the Subcontractor's organization, and positions lasting three (3) days or less. This term includes full-time employment, temporary employment of more than three (3) days' duration, and part-time employment.

"Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

"Positions that will be filled from within the Subcontractor's organization" means employment openings for which no consideration will be given to persons outside the Subcontractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Subcontractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

"Veteran of the Vietnam era" means a person who --

1. Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released there from with other than a dishonorable discharge; or
2. Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964 and May 7, 1975.

B. General.

1. Regarding any position for which the employee or applicant for employment is qualified, the Subcontractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Subcontractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam Era veterans without discrimination based upon their disability or veterans' status in all employment practices such as --
  - (i) Employment;
  - (ii) Upgrading;
  - (iii) Demotion or transfer;
  - (iv) Recruitment;
  - (v) Advertising;
  - (vi) Layoff or termination;
  - (vii) Rates of pay or other forms of compensation; and

(viii) Selection for training, including apprenticeship.

2. The Subcontractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

C. Listing openings.

1. The Subcontractor agrees to list all employment openings existing at subcontract award or occurring during subcontract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Subcontractor facility, including one not connected with performing this subcontract. An independent corporate affiliate is exempt from this requirement.
2. State and Local Government agencies holding Federal contracts or subcontracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service.
3. The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Subcontractor from any requirements of Executive Orders or regulations concerning nondiscrimination in employment.
4. Whenever the Subcontractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Subcontractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts/subcontracts. The Subcontractor may advise the State system when it is no longer bound by this subcontract clause.

D. Applicability.

1. This clause does not apply to the listing of employment openings which occur and are filled outside the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

E. Postings.

1. The Subcontractor agrees to post employment notices stating
  - (i) The Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era, and

- (ii) The rights of applicants and employees.
  - 2. These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the NREL Subcontract Administrator.
  - 3. The Subcontractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Subcontractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.
- F. Noncompliance.
- If the Subcontractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- G. Lower-tier Subcontracts.
- The Subcontractor shall include the terms of this clause in every lower-tier subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Subcontractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

**CLAUSE 20 - AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)**  
***Derived from FAR 52.222-36 (FD)***  
***(Applies to subcontracts exceeding \$10,000)***

- A. General.
- 1. Regarding any position for which the employee or applicant for employment is qualified, the Subcontractor shall not discriminate against any employee or applicant because of physical or mental disability. The Subcontractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as --
    - (i) Recruitment, advertising, and job application procedures;
    - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
    - (iii) Rates of pay or any other form of compensation and changes in compensation;
    - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
    - (v) Leaves of absence, sick leave, or any other leave;

- (vi) Fringe benefits available by virtue of employment, whether or not administered by the Subcontractor;
    - (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
    - (viii) Activities sponsored by the Subcontractor, including social or recreational programs; and
    - (ix) Any other term, condition, or privilege of employment.
  - 2. The Subcontractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C.793) (the Act), as amended.
- B. Postings.
- 1. The Subcontractor agrees to post employment notices stating --
    - (i) The Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
    - (ii) The rights of applicants and employees.
  - 2. These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Subcontractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Subcontractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the DOE Contracting Officer.
  - 3. The Subcontractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Subcontractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.
- C. Noncompliance.
- If the Subcontractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- D. Lower-tier Subcontracts.
- The Subcontractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Subcontractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

**CLAUSE 21 - EMPLOYMENT REPORTS ON DISABLED VETERANS  
AND VETERANS OF THE VIETNAM ERA (JAN 1999)**

***Derived from FAR 52.222-37 (FD)***

***(Applies to subcontracts exceeding \$10,000)***

- A. Unless the Subcontractor is a State or Local Government agency, the Subcontractor shall report at least annually, as required by the Secretary of Labor, on;
  - 1. The number of disabled veterans and the number of veterans of the Vietnam era in the workforce of the Subcontractor by job category and hiring location; and
  - 2. The total number of new employees hired during the period covered by the report, and of that total, the number of disabled veterans, and the number of veterans of the Vietnam era.
- B. The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."
- C. Reports shall be submitted no later than March 31 of each year beginning March 31, 1988.
- D. The employment activity report required by paragraph (A)(2) of this clause shall reflect total hires during the most recent twelve (12)-month period as of the ending date selected for the employment profile report required by paragraph (A)(1) of this clause. Subcontractors may select an ending date:
  - 1. As of the end of any pay period during the period January through March 1st of the year the report is due, or
  - 2. As of December 31, if the Subcontractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).
- E. The count of veterans reported according to paragraph (A) of this clause shall be based on voluntary disclosure. Each Subcontractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Subcontractor. The invitation shall state that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.
- F. Lower-tier Subcontracts.

The Subcontractor shall include the terms of this clause in every lower-tier subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

## **CLAUSE 22 - AUTHORIZATION AND CONSENT (JUL 1995)**

***Derived from FAR 52-227-1 (FD)***

- A. The Government authorizes and consents to all use and manufacture, in performing this subcontract or any subcontract at any tier, of any invention described in and covered by a United States patent
  - 1. Embodied in the structure or composition of any article the delivery of which is accepted by the NREL/Government under this subcontract or;
  - 2. Used in machinery, tools, or methods whose use necessarily results from compliance by the Subcontractor or a lower-tier subcontractor with--

- (i) Specifications or written provisions forming a part of this subcontract or
  - (ii) Specific written instructions given by the Government working through NREL directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this subcontract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.
- B. The Subcontractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold); however, omission of this clause from any lower-tier subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

#### **ALTERNATE I (APR 1984)**

***Alternate I of this clause is applicable if this award is for the conduct of research, development, or demonstration***

The following is substituted for paragraph (A) of the clause:

- A. The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this subcontract or any subcontract at any tier.

#### **ALTERNATE II (APR 1984)**

***Alternate II of this clause is applicable if this award includes an order or lower-tier subcontract for communication services and facilities***

The following is substituted for paragraph (A) of the clause:

- A. The Government authorizes and consents to all use and manufacture in the performance of any order at any tier or subcontract at any tier placed under this subcontract for communication services and facilities for which rates, charges, and tariffs are not established by a Government regulatory body, of any invention described in and covered by a United States patent
  - 1. Embodied in the structure or composition of any article the delivery of which is accepted by the Government through NREL under this subcontract or
  - 2. Used in machinery, tools, or methods whose use necessarily results from compliance by the Subcontractor or a lower-tier subcontractor with specifications or written provisions forming a part of this subcontract or with specific written instructions given by the DOE through NREL directing the manner of performance.

#### **CLAUSE 23 - NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)**

***Derived from FAR 52.227-2***

**(Applies to construction, research, development, or demonstration, subcontracts exceeding \$100,000)**

- A. The Subcontractor shall report to the DOE through NREL, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this subcontract of which the Subcontractor has knowledge.
- B. In the event of any claim or suit against NREL/Government on account of any alleged patent or copyright infringement arising out of the performance of this subcontract or out of the use of any supplies furnished or work or services performed under this subcontract, the Subcontractor shall furnish to the Government, when requested by the DOE through NREL, all evidence and information in possession of the Subcontractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Subcontractor has agreed to indemnify the Government.
- C. The Subcontractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer lower-tier subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at FAR 2.101.

**CLAUSE 24 - PATENT INDEMNITY (APR 1984)**

***Derived from FAR 52.227-3***

***(The provisions of this clause shall not be applicable if this award is for the conduct of research, development, or demonstration)***

- A. The Subcontractor shall indemnify the NREL/Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this subcontract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.
- B. This indemnity shall not apply unless the Subcontractor shall have been informed as soon as practicable by the NREL/Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to
  - 1. An infringement resulting from compliance with specific written instructions of the DOE through NREL directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the subcontract not normally used by the Subcontractor,
  - 2. An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or
  - 3. A claimed infringement that is unreasonably settled without the consent of the Subcontractor, unless required by final decree of a court of competent jurisdiction.

#### **ALTERNATE I (APR 1984)**

*Alternate I of this clause is not applicable to the items specifically listed and/or identified*

The following paragraph (C) is added to the clause:

- C. This patent indemnification shall not apply to the following items:

---

[List and/or identify the items to be excluded from this indemnity.]

#### **ALTERNATE II (APR 1984)**

*Alternate II of this clause is applicable to the items specifically listed and/or identified*

The following paragraph (C) is added to the clause:

- C. This patent indemnification shall cover the following items:

---

[List and/or identify the items to be included under this indemnity.]

#### **ALTERNATE III (JUL 1995)**

*Alternate III of this clause is applicable if this award includes a lower-tier subcontract for communication services and facilities*

The following paragraph is added to the clause:

- ( ) As to subcontracts at any tier for communication service, this clause shall apply only to individual communication service authorizations over the simplified acquisition threshold issued under this subcontract and covering those communications services and facilities
1. That are or have been sold or offered for sale by the Subcontractor to the public,
  2. That can be provided over commercially available equipment, or
  3. That involve relatively minor modifications.

#### **CLAUSE 25 - INSURANCE--LIABILITY TO THIRD PERSONS (SPECIAL - MAY 1999)**

*Derived from FAR 52.228-7*

*(Applies to cost reimbursement subcontracts)*

- A. 1. Except as provided in subparagraph (A)(2) of this clause, the Subcontractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage)

insurance, and such other insurance as the NREL Subcontract Administrator may require under this subcontract.

2. The Subcontractor may, with the approval of the NREL Subcontract Administrator, maintain a self-insurance program; **provided** that, with respect to workers' compensation, the Subcontractor is qualified pursuant to statutory authority.
3. The Subcontractor shall provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in this clause, with insurers approved by the NREL Subcontract Administrator.

Insurance Type	Bodily Injury		Property Damage
	Each Person	Each Occurrence	
Workers' Compensation	As required by law	As required by law	
Employer's Liability	\$100,000	\$100,000	
Comprehensive General Liability	\$500,000	\$500,000	\$100,000
Automobile Liability	\$200,000	\$500,000	\$20,000

- B. The Subcontractor agrees to submit for the NREL Subcontract Administrator's approval, to the extent and in the manner required by the NREL Subcontract Administrator, any other insurance that is maintained by the Subcontractor in connection with the performance of this subcontract and for which the Subcontractor seeks reimbursement.
- C. The Subcontractor shall be reimbursed --
  1. For that portion
    - (i) Of the reasonable cost of insurance allocable to this subcontract, and
    - (ii) Required or approved under this clause; and
  2. For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or the limitation of funds clause of this subcontract. These liabilities must arise out of the performance of this subcontract, whether or not caused by the negligence of the Subcontractor or of the Subcontractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by NREL/Government. These liabilities are for --
    - (i) Loss of or damage to property (other than property owned, occupied, or used by the Subcontractor, rented to the Subcontractor, or in the care, custody, or control of the Subcontractor); or

(ii) Death or bodily injury.

- D. NREL's/Government's liability under paragraph (C) of this clause is subject to the availability of appropriated funds at the time a contingency occurs. Nothing in this subcontract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.
- E. The Subcontractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities)-
1. For which the Subcontractor is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the subcontract;
  2. For which the Subcontractor has failed to insure or to maintain insurance as required by the NREL Subcontract Administrator; or
  3. That result from willful misconduct or lack of good faith on the part of any of the Subcontractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of --
    - (i) All or substantially all of the Subcontractor's business;
    - (ii) All or substantially all of the Subcontractor's operations at any one plant or separate location in which this subcontract is being performed; or
    - (iii) A separate and complete major industrial operation in connection with the performance of this subcontract.
- F. The provisions of paragraph (E) of this clause shall not restrict the right of the Subcontractor to be reimbursed for the cost of insurance maintained by the Subcontractor in connection with the performance of this subcontract, other than insurance required in accordance with this clause; **provided**, that such cost is allowable under the Allowable Cost and Payment clause of this subcontract.
- G. If any suit or action is filed or any claim is made against the Subcontractor, the cost and expense of which may be reimbursable to the Subcontractor under this subcontract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Subcontractor shall --
1. Immediately notify the NREL Subcontract Administrator and promptly furnish copies of all pertinent papers received;
  2. Authorize NREL/Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and
  3. Authorize NREL/Government representatives to settle or defend the claim and to represent the Subcontractor in or to take charge of any litigation, if required by the NREL/Government, when the liability is not insured or covered by bond. The Subcontractor may, at its own expense, be associated with NREL/Government representatives in any such claim or litigation.

**CLAUSE 26 - LIMITATION OF COST (APR 1984)**

***Derived from FAR 52.232-20***

***(Applies to fully funded, cost reimbursement subcontracts)***

- A. The parties estimate that performance of this subcontract, exclusive of any fee, will not cost NREL more than --

1. The estimated cost specified in the Schedule or,
2. If this is a cost-sharing subcontract, NREL's share of the estimated cost specified in the Schedule.

The Subcontractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this subcontract within the estimated cost, which, if this is a cost-sharing subcontract, includes both NREL's and the Subcontractor's share of the cost.

- B. The Subcontractor shall notify the NREL Subcontract Administrator in writing whenever it has reason to believe that --
1. The costs the Subcontractor expects to incur under this subcontract in the next sixty (60) days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Schedule; or
  2. The total cost for the performance of this subcontract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.
- C. As part of the notification, the Subcontractor shall provide the NREL Subcontract Administrator a revised estimate of the total cost of performing this subcontract.
- D. Except as required by other provisions of this subcontract, specifically citing and stated to be an exception to this clause --
1. NREL is not obligated to reimburse the Subcontractor for cost incurred in excess of
    - (i) The estimated cost specified in the Schedule or,
    - (ii) If this is a cost-sharing subcontract, the estimated cost to NREL specified in the Schedule; and
  2. The Subcontractor is not obligated to continue performance under this subcontract (including actions under the Termination clause of this subcontract) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until the NREL Subcontract Administrator --
    - (i) Notifies the Subcontractor in writing that the estimated cost has been increased and
    - (ii) Provides a revised estimated total cost of performing this subcontract. If this is a cost-sharing subcontract, the increase shall be allocated in accordance with the formula specified in the Schedule.
- E. No notice, communication, or representation in any form other than that specified in subparagraph (D)(2) above, or from any person other than the NREL Subcontract Administrator, shall affect this subcontract's estimated cost to NREL. In the absence of the specified notice, NREL is not obligated to reimburse the Subcontractor for any costs in excess of the estimated cost or, if this is a

cost-sharing subcontract, for any costs in excess of the estimated cost to NREL specified in the Schedule, whether those excess costs were incurred during the course of the subcontract or as a result of termination.

- F. If the estimated cost specified in the Schedule is increased, any costs the Subcontractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the NREL Subcontract Administrator issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.
- G. Change orders shall not be considered an authorization to exceed the estimated cost to NREL specified in the Schedule, unless they contain a statement increasing the estimated cost.
- H. If this subcontract is terminated or the estimated cost is not increased, NREL and the Subcontractor shall negotiate an equitable distribution of all property produced or purchased under the subcontract, based upon the share of costs incurred by each.

**CLAUSE 27 - LIMITATION OF FUNDS (APR 1984)**

***Derived from FAR 52.232-22***

***(Applies to incrementally funded, cost reimbursement subcontracts)***

- A. The parties estimate that performance of this subcontract will not cost NREL more than
  - 1. The estimated cost specified in the Schedule or,
  - 2. If this is a cost-sharing subcontract, NREL's share of the estimated cost specified in the Schedule.

The Subcontractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this subcontract within the estimated cost, which, if this is a cost-sharing subcontract, includes both NREL's and the Subcontractor's share of the cost.

- B. The Schedule specifies the amount presently available for payment by NREL and allotted to this subcontract, the items covered, NREL's share of the cost if this is a cost-sharing subcontract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that NREL will allot additional funds incrementally to the subcontract up to the full estimated cost to NREL specified in the Schedule, exclusive of any fee. The Subcontractor agrees to perform, or have performed, work on the subcontract up to the point at which the total amount paid and payable by NREL under the subcontract approximates but does not exceed the total amount actually allotted by NREL to the subcontract.
- C. The Subcontractor shall notify the NREL Subcontract Administrator in writing whenever it has reason to believe that the costs it expects to incur under this subcontract in the next sixty (60) days, when added to all costs previously incurred, will exceed seventy-five (75) percent of--
  - 1. The total amount so far allotted to the subcontract by NREL or,

2. If this is a cost-sharing subcontract, the amount then allotted to the subcontract by NREL plus the Subcontractor's corresponding share.

The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

- D. Sixty (60) days before the end of the period specified in the Schedule, the Subcontractor shall notify the NREL Subcontract Administrator in writing of the estimated amount of additional funds, if any, required to continue timely performance under the subcontract or for any further period specified in the Schedule or otherwise agreed upon, and when the funds will be required.
- E. If, after notification, additional funds are not allotted by the end of the period specified in the Schedule or another agreed-upon date, upon the Subcontractor's written request the NREL Subcontract Administrator will terminate this subcontract on that date in accordance with the provisions of the Termination clause of this subcontract. If the Subcontractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the NREL Subcontract Administrator may terminate this subcontract on that later date.
- F. Except as required by other provisions of this subcontract, specifically citing and stated to be an exception to this clause --
  1. NREL is not obligated to reimburse the Subcontractor for costs incurred in excess of the total amount allotted by NREL to this subcontract; and
  2. The Subcontractor is not obligated to continue performance under this subcontract (including actions under the Termination clause of this subcontract) or otherwise incur costs in excess of --
    - (i) The amount then allotted to the subcontract by NREL or;
    - (ii) If this is a cost-sharing subcontract, the amount then allotted by NREL to the subcontract plus the Subcontractor's corresponding share, until the NREL Subcontract Administrator notifies the Subcontractor in writing that the amount allotted by NREL has been increased and specifies an increased amount, which shall then constitute the total amount allotted by NREL to this subcontract.
- G. The estimated cost shall be increased to the extent that
  1. The amount allotted by NREL or,
  2. If this is a cost-sharing subcontract, the amount then allotted by NREL to the subcontract plus the Subcontractor's corresponding share, exceeds the estimated cost specified in the Schedule.

If this is a cost-sharing subcontract, the increase shall be allocated in accordance with the formula specified in the Schedule.
- H. No notice, communication, or representation in any form other than that specified in subparagraph (F)(2) above, or from any person other than the NREL Subcontract Administrator, shall affect the amount allotted by NREL to this subcontract. In the absence of the specified notice, NREL is not

obligated to reimburse the Subcontractor for any costs in excess of the total amount allotted by NREL to this subcontract, whether incurred during the course of the subcontract or as a result of termination.

- I. When and to the extent that the amount allotted by NREL to the subcontract is increased, any costs the Subcontractor incurs before the increase that are in excess of --
  - 1. The amount previously allotted by NREL or;
  - 2. If this is a cost-sharing subcontract, the amount previously allotted by NREL to the subcontract plus the Subcontractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the NREL Subcontract Administrator issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.
- J. Change orders shall not be considered an authorization to exceed the amount allotted by NREL specified in the Schedule, unless they contain a statement increasing the amount allotted.
- K. Nothing in this clause shall affect the right of NREL/Government to terminate this subcontract. If this subcontract is terminated, NREL and the Subcontractor shall negotiate an equitable distribution of all property produced or purchased under the subcontract, based upon the share of costs incurred by each.
- L. If NREL does not allot sufficient funds to allow completion of the work, the Subcontractor is entitled to a percentage of the fee specified in the Schedule equaling the percentage of completion of the work contemplated by this subcontract.

**CLAUSE 28 - BANKRUPTCY (JUL 1995)**

***Derived from FAR 52.242-13***

***(Applies to subcontracts exceeding \$100,000)***

In the event the Subcontractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Subcontractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the NREL Subcontract Administrator responsible for administering the subcontract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this subcontract.

**CLAUSE 29 - STOP WORK ORDER (AUG 1989) AND ALTERNATE 1 - COST REIMBURSEMENT (AUG 1989)**

***Derived from FAR 52.242-15***

- A. The NREL Subcontract Administrator may, at any time, by written order to the Subcontractor, require the Subcontractor to stop all, or any part, of the work called for by this subcontract for a period of ninety (90) days after the order is delivered to the Subcontractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety

(90) days after a stop-work is delivered to the Subcontractor, or within any extension of that period to which the parties shall have agreed, the NREL Subcontract Administrator shall either --

1. Cancel the stop-work order; or
  2. Terminate the work covered by the order as provided in the Default or the Termination clause of this subcontract.
- B. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Subcontractor shall resume work. The NREL Subcontract Administrator shall make an equitable adjustment and the subcontract shall be modified, in writing, accordingly, if --
1. The stop-work order results in an increase in the time required for, or in the Subcontractor's cost properly allocable to, the performance of any part of this subcontract; and
  2. The Subcontractor asserts its right to the adjustment within thirty (30) days after the end of the period of work stoppage; provided, that, if the NREL Subcontract Administrator decides the facts justify the action, the NREL Subcontract Administrator may receive and act upon the claim submitted at any time before final payment under this subcontract.
- C. If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of NREL/Government, the NREL Subcontract Administrator shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- D. If a stop-work order is not canceled and the work covered by the order is terminated for default, the NREL Subcontract Administrator shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

***Alternate I (Apr 1984)***

If this clause is inserted in a cost-reimbursement subcontract, substitute in paragraph (A)(2) the words "the Termination clause of this subcontract" for the words "the Default, or the Termination for Convenience of NREL/Government clause of this subcontract." In paragraph (B) substitute the words "an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the subcontract that may be affected" for the words "an equitable adjustment in the delivery schedule or subcontract price, or both."

**CLAUSE 30 - CHANGES - COST REIMBURSEMENT (AUG 1987) AND ALTERNATE V - RESEARCH AND DEVELOPMENT(AUG 1987)**

***Derived from FAR 52.243-2***

- A. The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
1. Drawings, designs, or specifications.

2. Method of shipment or packing.
  3. Place of inspection, delivery, or acceptance.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this subcontract, whether or not changed by the order, or otherwise affects any other terms and conditions of this subcontract, the NREL Subcontract Administrator shall make an equitable adjustment in the --
1. Estimated cost or delivery or completion schedule, or both;
  2. Amount of any fixed fee; and
  3. Other affected terms and shall modify the subcontract accordingly.
- C. The Subcontractor must assert its right to an adjustment under this clause within thirty (30) days from the date of receipt of the written order. However, if the NREL Subcontract Administrator decides that the facts justify it, the NREL Subcontract Administrator may receive and act upon a proposal submitted before final payment of the subcontract.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.
- E. Notwithstanding the terms and conditions of paragraphs (A) and (B) above, the estimated cost of this subcontract and, if this subcontract is incrementally funded, the funds allotted for the performance of this subcontract, shall not be increased or considered to be increased except by specific written modification of the subcontract indicating the new subcontract estimated cost and, if this subcontract is incrementally funded, the new amount allotted to the subcontract. Until this modification is made, the Subcontractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost clause or Limitation of Funds article of this subcontract.

#### **CLAUSE 31 - LOWER-TIER SUBCONTRACTS (AUG 1998)**

*Derived from FAR 52.244-2*

*(Applies to all cost reimbursement subcontracts; and letter, fixed price, time and material, and labor hour subcontracts exceeding \$100,000)*

##### **A. Definitions.**

As used in this clause-

"Approved purchasing system" means a Subcontractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR)

"Consent to lower-tier subcontract" means the NREL Subcontract Administrator's written consent for the Subcontractor to enter into a particular lower-tier subcontract.

“Lower-tier subcontract” means any contract, as defined in FAR Subpart 2.1, entered into by a lower-tier subcontractor to furnish supplies or services for performance of the prime contract or a lower-tier subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

- B. This clause does not apply to lower-tier subcontracts for special test equipment when the subcontract contains the clause at FAR 52.245-18, Special Test Equipment.
- C. When this clause is included in a fixed-price type subcontract, consent to lower-tier subcontract is required only on unpriced subcontract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (D) or (E) or this clause.
- D. If the Subcontractor does not have an approved purchasing system, consent to lower-tier subcontract is required for any lower-tier subcontract that--
  - 1. Is of the cost-reimbursement, time-and-materials, or labor-hour type; or
  - 2. Is fixed-price and exceeds--
    - (i) For a subcontract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold (\$100,000) or five (5) percent of the total estimated cost of the subcontract; or
    - (ii) For subcontracts awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold (\$100,000) or five (5) percent of the total estimated cost of the subcontract.
- E. If the Subcontractor has an approved purchasing system, the Subcontractor nevertheless shall obtain the NREL Subcontract Administrator’s written consent before placing the following lower-tier subcontracts:

Lower tier subcontracts requiring written consent are identified in the subcontract schedule.

- F. 1. The Subcontractor shall notify the NREL Subcontract Administrator reasonably in advance of placing any lower-tier subcontract or modification thereof for which consent is required under paragraph (C), (D), or (E) of this clause, including the following information:
  - (i) A description of the supplies or services to be lower-tier subcontracted.
  - (ii) Identification of the type of lower-tier subcontract to be used.
  - (iii) Identification of the proposed lower-tier subcontractor.
  - (iv) The proposed lower-tier subcontract price.

- (v) The lower-tier subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other subcontract provisions.
  - (vi) The lower-tier subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this subcontract.
  - (vii) A negotiation memorandum reflecting --
    - a. The principal elements of the lower-tier subcontract price negotiations;
    - b. The most significant considerations controlling establishment of initial or revised prices;
    - c. The reason cost or pricing data were or were not required;
    - d. The extent, if any, to which the Subcontractor did not rely on the lower-tier subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
    - e. The extent to which it was recognized in the negotiation that the lower-tier subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Subcontractor and the lower-tier subcontractor; and the effect of any such defective data on the total price negotiated;
    - f. The reasons for any significant difference between the Subcontractor's price objective and the price negotiated; and
    - g. A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.
  - 2. The Subcontractor is not required to notify the NREL Subcontract Administrator in advance of entering into any lower-tier subcontract for which consent is not required under paragraph (C), (D), or (E) or this clause.
- G. Unless the consent or approval specifically provides otherwise, neither consent by the NREL Subcontract Administrator to any subcontract nor approval of the Subcontractor's purchasing system shall constitute a determination --
- 1. Of the acceptability of any subcontract terms or conditions;
  - 2. Of the allowability of any cost under this subcontract; or

3. To relieve the Subcontractor of any responsibility for performing this subcontract.
- H. No lower-tier subcontract or modification thereof placed under this subcontract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type lower-tier subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).
- I. The Subcontractor shall give the NREL Subcontract Administrator immediate written notice of any action or suit filed and prompt notice of any claim made against the Subcontractor by any lower-tier subcontractor or vendor that, in the opinion of the Subcontractor, may result in litigation related in any way to this subcontract, with respect to which the Subcontractor may be entitled to reimbursement from NREL/Government.
- J. NREL/Government reserves the right to review the Subcontractor's purchasing system as set forth in FAR Subpart 44.3.
- K. Paragraphs (D) and (F) of this clause do not apply to the following lower-tier subcontracts, which were evaluated during negotiations:

Lower tier subcontracts evaluated during negotiations are identified in the subcontract schedule.

**CLAUSE 32 - SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (OCT 1998)**

***Derived from FAR 52.244-6***

***(Applies to solicitations and subcontracts for supplies or services other than commercial items)***

- (a) Definitions.  
"Commercial item," as used in this clause, has the meaning contained in the clause at 52.202-1, Definitions. "Subcontract," as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.
- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.
- (c) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:

(1) 52.222-26, Equal Opportunity (E.O.11246);

(2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C.4212(a));

(3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C.793); and

(4) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C.1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

**CLAUSE 33 - INSPECTION OF SERVICES--COST-REIMBURSEMENT (APR 1984)**

***Derived from FAR 52.246-5***

- A. Definition. "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.
- B. The Subcontractor shall provide and maintain an inspection system acceptable to NREL covering the services under this subcontract. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to NREL/Government during subcontract performance and for as long afterwards as the subcontract requires.
- C. NREL/Government have the right to inspect and test all services called for by the subcontract, to the extent practicable at all places and times during the term of the subcontract. Such inspections and tests shall be performed in a manner that will not unduly delay the work.
- D. If any of the services performed do not conform with subcontract requirements, NREL may require the Subcontractor to perform the services again in conformity with subcontract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, NREL may--
  - 1. Require the Subcontractor to take necessary action to ensure that future performance conforms to subcontract requirements; and
  - 2. Reduce any fee payable under the subcontract to reflect the reduced value of the services performed.
- E. If the Subcontractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with subcontract requirements, NREL may--
  - 1. By subcontract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances ;or
  - 2. Terminate the subcontract for default.

**CLAUSE 34 - INSPECTION OF RESEARCH AND DEVELOPMENT  
(SHORT FORM) (APR 1984)**

*Derived from FAR 52.246-9*

NREL/Government have the right to inspect and evaluate the work performed or being performed under the subcontract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If NREL/Government perform inspections or evaluations on the premises of the Subcontractor or a lower-tier subcontractor, the Subcontractor shall furnish and shall require lower-tier subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

**CLAUSE 35 - PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JAN 1997)**

*Derived from FAR 52.247-63 (FD)*

- A. "International air transportation," as used in this clause, means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States," as used in this clause, means the fifty (50) States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

"U.S.-flag air carrier," as used in this clause, means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

- B. Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government Contractors and Subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- C. The Subcontractor agrees, in performing work under this subcontract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.
- D. In the event that the Subcontractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Subcontractor shall include a statement on vouchers involving such transportation essentially as follows:

**STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS**

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following

reasons (see section 47.403 of the Federal Acquisition Regulation): *(State reasons)*:

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- E. The Subcontractor shall include the substance of this clause, including this paragraph (E), in each lower-tier subcontract or purchase under this subcontract that may involve international air transportation.

**CLAUSE 36 - TERMINATION FOR CONVENIENCE OF NREL/GOVERNMENT  
(EDUCATIONAL AND OTHER NONPROFIT INSTITUTIONS) (SEP 1996)**  
***Derived from FAR 52.249-5 (FD)***

- A. NREL may terminate performance of work under this subcontract in whole or, from time to time, in part if the NREL Subcontract Administrator determines that a termination is in NREL's/Government's interest. The NREL Subcontract Administrator shall terminate by delivering to the Subcontractor a Notice of Termination specifying the extent of termination and the effective date.
- B. After receipt of a Notice of Termination and except as directed by the NREL Subcontract Administrator, the Subcontractor shall immediately proceed with the following obligations:
1. Stop work as specified in the notice.
  2. Place no further subcontracts or orders (referred to as lower-tier subcontracts in this clause), except as necessary to complete the continued portion of the subcontract.
  3. Terminate all applicable lower-tier subcontracts and cancel or divert applicable commitments covering personal services that extend beyond the effective date of termination.
  4. Assign to NREL, as directed by the NREL Subcontract Administrator, all right, title, and interest of the Subcontractor under the lower-tier subcontracts terminated, in which case NREL shall have the right to settle or pay any termination settlement proposal arising out of those terminations.
  5. With approval or ratification to the extent required by the NREL Subcontract Administrator, settle all outstanding liabilities and termination settlement proposals arising from the termination of lower-tier subcontracts; approval or ratification will be final for purposes of this clause.
  6. Transfer title to the Government (if not already transferred) and, as directed by the NREL Subcontract Administrator, deliver to NREL any information and items that, if the subcontract had been completed, would have been required to be furnished, including--
    - (i) Materials or equipment produced, in process, or acquired for the work terminated; and
    - (ii) Completed or partially completed plans, drawings, and information.

7. Complete performance of the work not terminated.
  8. Take any action that may be necessary, or that the NREL Subcontract Administrator may direct, for the protection and preservation of the property related to this subcontract that is in the possession of the Subcontractor and in which the Government has or may acquire an interest.
  9. Use its best efforts to sell, as directed or authorized by the NREL Subcontract Administrator, termination inventory other than that retained by the Government under subparagraph (B)(6) of this clause; **provided**, however, that the Subcontractor--
    - (i) Is not required to extend credit to any purchaser; and
    - (ii) May acquire the property under the conditions prescribed by, and at prices approved by, the NREL Subcontract Administrator. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by NREL under this subcontract, credited to the price or cost of the work, or paid in any other manner directed by the NREL Subcontract Administrator.
- C. The Subcontractor shall submit complete termination inventory schedules no later than one hundred twenty (120) days from the effective date of termination, unless extended in writing by the NREL Subcontract Administrator upon written request of the Subcontractor within this one hundred twenty (120)-day period.
- D. After termination, the Subcontractor shall submit a final termination settlement proposal to the NREL Subcontract Administrator in the form and with the certification prescribed by the NREL Subcontract Administrator. The Subcontractor shall submit the proposal promptly but no later than one (1) year from the effective date of termination unless extended in writing by the NREL Subcontract Administrator upon written request of the Subcontractor with this one (1)-year period. If the Subcontractor fails to submit the termination settlement proposal within the time allowed, the NREL Subcontract Administrator may determine, on the basis of information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.
- E. Subject to paragraph (D) of this clause, the Subcontractor and the NREL Subcontract Administrator may agree upon the whole or any part of the amount to be paid because of the termination. This amount may include reasonable cancellation charges incurred by the Subcontractor and any reasonable loss on outstanding commitments for personal services that the Subcontractor is unable to cancel; **provided**, that the Subcontractor exercised reasonable diligence in diverting such commitments to other operations. The subcontract shall be amended and the Subcontractor paid the agreed amount.
- F. The cost principles and procedures in Part 31.3 of the Federal Acquisition Regulations (FAR), in effect on the date of the subcontract, shall govern all costs claimed, agreed to, or determined under this clause; however, if the Subcontractor is not an educational institution, and is a nonprofit organization under Office of Management and Budget (OMB) Circular A-122, "Cost Principles for Nonprofit Organizations," July 8, 1980, those cost principles shall apply; **provided**, that if the

Subcontractor is a nonprofit institution listed in Attachment C of OMB Circular A-122, the cost principles at FAR 31.2 for commercial organizations shall apply to such Subcontractor.

- G. NREL may, under the terms and conditions it prescribes, make partial payments against costs incurred by the Subcontractor for the terminated portion of this subcontract, if the NREL Subcontract Administrator believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.
- H. The Subcontractor has the right of appeal as provided under the Disputes clause, except that if the Subcontractor failed to submit the termination settlement proposal within the time provided in paragraph (D) and failed to request a time extension, there is no right of appeal.

**CLAUSE 37 - TERMINATION (COST-REIMBURSEMENT) (SEP 1996)**

***Derived from FAR 52.249-6 (FD)***

***(Applies to cost reimbursement subcontracts except subcontracts for research and development work with educational or nonprofit institutions)***

- A. NREL may terminate performance of work under this subcontract in whole or, from time to time, in part, if --
  - 1. The NREL Subcontract Administrator determines that a termination is in NREL's/Government's interest; or
  - 2. The Subcontractor defaults in performing this subcontract and fails to cure the default within ten (10) days (unless extended by the NREL Subcontract Administrator) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.
- B. The NREL Subcontract Administrator shall terminate by delivering to the Subcontractor a Notice of Termination specifying whether termination is for default of the Subcontractor or for convenience of NREL/Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Subcontractor was not in default or that the Subcontractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Subcontractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of NREL/Government.
- C. After receipt of a Notice of Termination, and except as directed by the NREL Subcontract Administrator, the Subcontractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
  - 1. Stop work as specified in the notice.
  - 2. Place no further lower-tier subcontracts or orders (referred to as lower-tier subcontracts in this clause), except as necessary to complete the continued portion of the subcontract.
  - 3. Terminate all lower-tier subcontracts to the extent they relate to the work terminated.

4. Assign to NREL, as directed by the NREL Subcontract Administrator, all right, title, and interest of the Subcontractor under the lower-tier subcontracts terminated, in which case NREL shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
  5. With approval or ratification to the extent required by the NREL Subcontract Administrator, settle all outstanding liabilities and termination settlement proposals arising from the termination of lower-tier subcontracts, the cost of which would be reimbursable in whole or in part, under this subcontract; approval or ratification will be final for purposes of this clause.
  6. Transfer title to the Government (if not already transferred) and, as directed by the NREL Subcontract Administrator, deliver to NREL --
    - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;
    - (ii) The completed or partially completed plans, drawings, information, and other property that, if the subcontract had been completed, would be required to be furnished to NREL; and
    - (iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this subcontract, the cost of which the Subcontractor has been or will be reimbursed under this subcontract.
  7. Complete performance of the work not terminated.
  8. Take any action that may be necessary, or that the NREL Subcontract Administrator may direct, for the protection and preservation of the property related to this subcontract that is in the possession of the Subcontractor and in which NREL/Government has or may acquire an interest.
  9. Use its best efforts to sell, as directed or authorized by the NREL Subcontract Administrator, any property of the types referred to in subparagraph (C)(6) of this clause; **provided**, however, that the Subcontractor--
    - (i) Is not required to extend credit to any purchaser; and
    - (ii) May acquire the property under the conditions prescribed by, and at prices approved by, the NREL Subcontract Administrator. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by NREL under this subcontract, credited to the price or cost of the work, or paid in any other manner directed by the NREL Subcontract Administrator.
- D. The Subcontractor shall submit complete termination inventory schedules no later than one hundred twenty (120) days from the effective date of termination, unless extended in writing by the

NREL Subcontract Administrator upon written request of the Subcontractor within this one hundred twenty (120)-day period.

- E. After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Subcontractor may submit to the NREL Subcontract Administrator a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the NREL Subcontract Administrator. The Subcontractor may request the NREL/Government to remove those items or enter into an agreement for their storage. Within fifteen (15) days, NREL/Government will accept the items and remove them or enter into a storage agreement. The NREL Subcontract Administrator may verify the list upon removal of the items, or if stored, within forty-five (45) days from submission of the list, and shall correct the list, as necessary, before final settlement.
- F. After termination, the Subcontractor shall submit a final termination settlement proposal to the NREL Subcontract Administrator in the form and with the certification prescribed by the NREL Subcontract Administrator. The Subcontractor shall submit the proposal promptly, but no later than one (1) year from the effective date of termination, unless extended in writing by the NREL Subcontract Administrator upon written request of the Subcontractor within this one (1)-year period. However, if the NREL Subcontract Administrator determines that the facts justify it, a termination settlement proposal may be received and acted on after one (1) year or any extension. If the Subcontractor fails to submit the proposal within the time allowed, the NREL Subcontract Administrator may determine, on the basis of information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.
- G. Subject to paragraph (F) of this clause, the Subcontractor and the NREL Subcontract Administrator may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The subcontract shall be amended, and the Subcontractor paid the agreed amount.
- H. If the Subcontractor and the NREL Subcontract Administrator fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the NREL Subcontract Administrator shall determine, on the basis of information available, the amount, if any, due the Subcontractor and shall pay the amount, which shall include the following:
  - 1. All costs reimbursable under this subcontract, not previously paid, for the performance of this subcontract before the effective date of termination, and those costs that may continue for a reasonable time with the approval of or as directed by the NREL Subcontract Administrator; however, the Subcontractor shall discontinue those costs as rapidly as practicable.
  - 2. The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the subcontract if not included in subparagraph (H)(1) of this clause.
  - 3. The reasonable costs of settlement of the work terminated, including--
    - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

- (ii) The termination and settlement of lower-tier subcontracts (excluding the amounts of such settlements); and
  - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Subcontractor's termination settlement proposal may be included.
- 4. A portion of the fee payable under the subcontract, determined as follows:
  - (i) If the subcontract is terminated for the convenience of NREL/Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the subcontract, but excluding subcontract effort included in lower-tier subcontractor's termination proposals, less previous payments for fee.
  - (ii) If the subcontract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by NREL is to the total number of articles (or amount of services) of a like kind required by the subcontract.
- 5. If the settlement includes only fee, it will be determined under subparagraph (H)(4) of this clause.
- I. The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this subcontract, shall govern all costs claimed, agreed to, or determined under this clause.
- J. The Subcontractor shall have the right of appeal, under the Disputes clause, from any determination made by the NREL Subcontract Administrator under paragraph (F), (H), or (L) of this clause, except that if the Subcontractor failed to submit the termination settlement proposal within the time provided in paragraph (F) and failed to request a time extension, there is no right of appeal. If the NREL Subcontract Administrator has made a determination of the amount due under paragraph (F), (H), or (L) of this clause, NREL shall pay the Subcontractor--
  - 1. The amount determined by the NREL Subcontract Administrator if there is no right of appeal or if no timely appeal has been taken; or
  - 2. The amount finally determined on an appeal.
- K. In arriving at the amount due the Subcontractor under this clause, there shall be deducted --
  - 1. All unliquidated advance or other payments to the Subcontractor, under the terminated portion of this subcontract.
  - 2. Any claim which NREL/Government has against the Subcontractor under this subcontract; and

3. The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Subcontractor or sold under this clause and not recovered by or credited to NREL/Government.
- L. The Subcontractor and NREL Subcontract Administrator must agree to any equitable adjustment in fee for the continued portion of the subcontract when there is a partial termination. The NREL Subcontract Administrator shall amend the subcontract to reflect the agreement.
- M.
  1. NREL may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Subcontractor for the terminated portion of the subcontract, if the NREL Subcontract Administrator believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.
  2. If the total payments exceed the amount finally determined to be due, the Subcontractor shall repay the excess to NREL/Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Subcontractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Subcontractor's termination settlement proposal because of retention or other disposition of termination inventory until ten (10) days after the date of the retention or disposition, or a later date determined by the NREL Subcontract Administrator because of the circumstances.
- N. The provisions of the clause relating to fee are inapplicable if this subcontract does not include a fee.

***ALTERNATE IV (SEP 1996).***

***(If the subcontract is a TIME-AND-MATERIAL or LABOR- HOUR subcontract, substitute the following paragraphs (H) and (L) for paragraphs (H) and (L) of the basic clause:)***

- H. If the Subcontractor and the NREL Subcontract Administrator fail to agree in whole or in part on the amount to be paid because of the termination of work, the NREL Subcontract Administrator shall determine, on the basis of information available, the amount, if any, due the Subcontractor and shall pay the amount determined as follows:
  1. If the termination is for the convenience of NREL/Government, include--
    - (i) An amount for direct labor hours (as defined in the Schedule of the subcontract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule, less any hourly rate payments already made to the Subcontractor;
    - (ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to the Subcontractor;

- (iii) An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination if they are reasonably incurred after the effective date, with the approval of or as directed by the NREL Subcontract Administrator; however, the Subcontractor shall discontinue these expenses as rapidly as practicable;
  - (iv) If not included in subdivision (H)(1)(i), (ii), or (iii) of this clause, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the subcontract; and
  - (v) The reasonable costs of settlement of the work terminated, including--
    - a. Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
    - b. The termination and settlement of Lower-tier subcontracts (excluding the amounts of such settlements); and
    - c. Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory.
2. If the termination is for default of the Subcontractor, include the amounts computed under subparagraph (H)(1) of this clause but omit--
- (i) Any amount for preparation of the Subcontractor's termination settlement proposal; and
  - (ii) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by NREL/Government.

\* \* \* \* \*

- I. If the termination is partial, the Subcontractor may file with the NREL Subcontract Administrator a proposal for an equitable adjustment of the price(s) for the continued portion of the subcontract. The NREL Subcontract Administrator shall make any equitable adjustment agreed upon. Any proposal by the Subcontractor for an equitable adjustment under this clause shall be requested within ninety (90) days from the effective date of termination, unless extended in writing by the NREL Subcontract Administrator.

**CLAUSE 38 - EXCUSABLE DELAYS (APR 1984)**

***Derived from FAR 52.249-14 (FD)***

***(Applies to cost reimbursement subcontracts on a fee basis)***

- A. Except for defaults of subcontractors at any tier, the Subcontractor shall not be in default because of any failure to perform this subcontract under its terms if the failure arises from causes beyond

the control and without the fault or negligence of the Subcontractor. Examples of these causes are—

1. Acts of God or of the public enemy,
2. Acts of the Government in either its sovereign or contractual capacity,
3. Fires,
4. Floods,
5. Epidemics,
6. Quarantine restrictions,
7. Strikes,
8. Freight embargoes, and
9. Unusually severe weather.

In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor. "Default" includes failure to make progress in the work so as to endanger performance.

- B. If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Subcontractor and lower-tier subcontractor, and without the fault or negligence of either, the Subcontractor shall not be deemed to be in default, unless--
1. The lower-tier subcontracted supplies or services were obtainable from other sources;
  2. The NREL Subcontract Administrator ordered the Subcontractor in writing to purchase these supplies or services from the other source; and
  3. The Subcontractor failed to comply reasonably with this order.
- C. Upon request of the Subcontractor, the NREL Subcontract Administrator shall ascertain the facts and extent of the failure. If the NREL Subcontract Administrator determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of NREL/Government under the termination clause of this subcontract.

#### **CLAUSE 39 - REFUND OF ROYALTIES (FEB 1995)**

***Derived from DEAR 952.227-9 (FD)***

- A. The subcontract price includes certain amounts for royalties payable by the Subcontractor or lower-tier subcontractors or both, which amounts have been reported to the DOE through NREL.
- B. The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent

applications in connection with performing this subcontract or any lower-tier subcontract hereunder. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this subcontract or the copying of such data or data that is copyrighted.

- C. The Subcontractor shall furnish to the DOE through NREL, before final payment under this subcontract, a statement of royalties paid or required to be paid in connection with performing this subcontract and lower-tier subcontracts hereunder together with the reasons.
- D. The Subcontractor will be compensated for royalties reported under paragraph (C) of this clause, only to the extent that such royalties were included in the subcontract price and are determined by the DOE to be properly chargeable to the Government and allocable to the subcontract. To the extent that any royalties that are included in the subcontract price are not, in fact, paid by the Subcontractor or are determined by the DOE not to be properly chargeable to the Government and allocable to the subcontract, the subcontract price shall be reduced. Repayment or credit to the Government shall be made as the DOE directs. The approval by DOE of any individual payments or royalties shall not prevent the Government from contesting at any time the enforceability, validity, scope of, or title to, any patent or the proprietary nature of data pursuant to which a royalty or other payment is to be or has been made.
- E. If, at any time within three (3) years after final payment under this subcontract, the Subcontractor for any reason is relieved in whole or in part from the payment of the royalties included in the final subcontract price as adjusted pursuant to paragraph (D) of this clause, the Subcontractor shall promptly notify the DOE through NREL of that fact and shall reimburse the Government in a corresponding amount.
- F. The substance of this clause, including this paragraph (F), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

#### **CLAUSE 40 - FOREIGN TRAVEL (FEB 1997)**

***Derived from DEAR 952.247-70 (FD)***

- A. Foreign travel, when charged directly, shall be subject to the prior approval of the NREL Subcontract Administrator for each separate trip regardless of whether funds for such travel are contained in an approved budget. Foreign travel is defined as any travel outside of Canada, Mexico, and the United States and its territories and possessions.
- B. Request for approval shall be submitted at least forty-five (45) days prior to the planned departure date, be on a Request for Approval of Foreign Travel form, and when applicable, include a notification of proposed soviet-bloc travel.

#### **CLAUSE 41 - INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (JUN 1997)**

***Derived from DEAR 970.5204-2 (FD)***

***(Applies to subcontracts that involve complex or hazardous work that is to be performed on a Government-owned or -leased facility.)***

- A. For the purposes of this clause,
  - 1. "Safety" encompasses environment, safety, and health, including pollution prevention and waste minimization; and
  - 2. "Employees" include Lower-tier subcontractor employees.

- B. In performing work under this subcontract, the Subcontractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Subcontractor shall exercise a degree of care commensurate with the work and the associated hazards. The Subcontractor shall ensure that management of environment, safety, and health (ES&H) functions and activities becomes an integral but visible part of the Subcontractor's work planning and execution processes. The Subcontractor shall, in the performance of work, ensure that:
1. Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Subcontractor and lower-tier subcontractor employees managing or supervising employees performing work.
  2. Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.
  3. Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.
  4. Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
  5. Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
  6. Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
  7. The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by NREL/Government and the Subcontractor. These agreed-upon conditions and requirements are requirements of the subcontract and binding upon the Subcontractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.
- C. The Subcontractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (B) of this clause at a minimum. Documentation of the System shall describe how the Subcontractor will:
1. Define the scope of work;
  2. Identify and analyze hazards associated with the work;
  3. Develop and implement hazard controls;

4. Perform work within controls; and
  5. Provide feedback on adequacy of controls and continue to improve safety management.
- D. The System shall describe how the Subcontractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the Subcontractor will measure system effectiveness.
- E. The Subcontractor shall submit to the NREL Subcontract Administrator documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the NREL Subcontract Administrator. Guidance on the preparation, content, review, and approval of the System will be provided by the NREL Subcontract Administrator. On an annual basis, the Subcontractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the Subcontractor's business processes for work planning, budgeting, authorization, execution, and change control.
- F. The Subcontractor shall comply with, and assist the DOE in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this subcontract on Laws, Regulations, and DOE Directives. The Subcontractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this subcontract.
- G. The Subcontractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the Subcontractor fails to provide resolution or if, at any time, the Subcontractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the NREL Subcontract Administrator may issue an order stopping work in whole or in part. Any stop work order issued by a NREL Subcontract Administrator under this clause (or issued by the Subcontractor to a lower-tier subcontractor in accordance with paragraph (I) of this clause) shall be without prejudice to any other legal or contractual rights of NREL/Government. In the event that the NREL Subcontract Administrator issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the NREL Subcontract Administrator. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.
- H. The Subcontractor is responsible for compliance with the ES&H requirements applicable to this contract regardless of the performer of the work.
- I. The Subcontractor shall include a clause substantially the same as this clause in lower-tier subcontracts involving complex or hazardous work on site at a DOE-owned or -leased facility. Such lower-tier subcontracts shall provide for the right to stop work under the conditions described in paragraph (G) of this clause. Depending on the complexity and hazards associated with the work, the Subcontractor may require that the lower-tier subcontractor submit a Safety Management System for the Subcontractor's review and approval.

**CLAUSE 42 - ACCOUNTS, RECORDS, AND INSPECTION (JUN 1996)**  
***Derived from DEAR 970.5204-9 (FD)***

A. Accounts.

The Subcontractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting all allowable costs incurred, revenues or other applicable credits, fixed-fee accruals, and the receipt, use and disposition of all Government property coming into the possession of the Subcontractor under this subcontract. The system of accounts employed by the Subcontractor shall be acceptable to NREL/Government and in accordance with generally accepted accounting principles consistently applied.

B. Inspection and Audit of Accounts and Records.

All books of account and records relating to this subcontract shall be subject to inspection and audit by NREL/Government at all reasonable times, before and during the period of retention provided for in (D) below, and the Subcontractor shall afford proper facilities for such inspection and audit.

C. Audit of Subcontractors' Records.

The Subcontractor also agrees, with respect to any lower-tier subcontracts (including fixed price or unit-price lower-tier subcontracts or purchase orders) where, under the terms of the lower-tier subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the lower-tier subcontractor's costs or arrange for such an audit to be performed by the cognizant Government audit agency through the NREL Subcontract Administrator.

D. Disposition of Records.

Except as agreed upon by NREL and the Subcontractor, all financial and cost reports, books of account and supporting documents, and other data evidencing costs allowable, revenues, and other applicable credits under this subcontract, shall be the property of the Government, and shall be delivered to NREL or otherwise disposed of by the Subcontractor either as the NREL Subcontract Administrator may from time to time direct during the progress of the work or, in any event, as the NREL Subcontract Administrator shall direct upon completion or termination of this subcontract and final audit of accounts hereunder. Except as provided in this subcontract, all other records in the possession of the Subcontractor relating to this subcontract shall be preserved by the Subcontractor for a period of three (3) years after final payment under this subcontract or otherwise disposed of in such manner as may be agreed upon by NREL/Government and the Subcontractor.

E. Reports.

The Subcontractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this subcontract as the NREL Subcontract Administrator may from time to time require.

F. Inspections.

NREL/Government shall have the right to inspect the work and activities of the Subcontractor under this subcontract at such time and in such manner as it shall deem appropriate.

G. Lower-tier Subcontracts.

The Subcontractor further agrees to require the inclusion of provisions similar to those in paragraphs (A) through (G) and paragraph (I) of this clause in all lower-tier subcontracts (including fixed price or unit price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the lower-tier subcontract, costs incurred are a factor in determining the amount payable to the lower-tier subcontractor.

*(The following paragraph (H) shall be included in--*

- 1. All cost-type subcontracts (or lower-tier subcontracts) involving an estimated cost exceeding \$5 million and expected to run more than two (2) years, and*
- 2. Any other cost-type subcontract (or lower-tier subcontract) where deemed advisable by the DOE Head of the Contracting Activity and when the Subcontractor (or lower-tier subcontractor) already has an established internal audit organization.)*

H. Internal Audit.

The Subcontractor agrees to conduct an internal audit and examination satisfactory to NREL/Government of the records, operations, expenses, and the transactions with respect to costs claimed to be allowable under this subcontract annually and at such other times as may be mutually agreed upon. The results of such audit, including the working papers, shall be submitted or made available to the NREL Subcontract Administrator.

I. Comptroller General.

1. The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Subcontractor's directly pertinent records involving transactions related to this subcontract or a lower-tier subcontract hereunder.
2. This paragraph may not be construed to require the Subcontractor or lower-tier subcontractor to create or maintain any record that the Subcontractor or lower-tier subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
3. Nothing in this subcontract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this subcontract.

**CLAUSE 43 - PRINTING CLAUSE FOR SUBCONTRACTS (APR 1984)**

***Derived from DEAR 970.5204-19 (FD)***

- A. To the extent that duplicating or printing services may be required in the performance of this subcontract, the Subcontractor shall provide or secure such services in accordance with the

Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.

- B. The term "Printing" includes the following processes: composition, platemaking, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this subcontract involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.
- C. Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed.
- D. In all lower-tier subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations), the Subcontractor shall include a provision substantially the same as this clause.

**CLAUSE 44 - PROPERTY (JUNE 1997)**

***Derived from DEAR 970.5204-21 (FD)***

***(Applies to cost reimbursement subcontracts)***

- A. Furnishing of Government property.

The Government reserves the right to furnish any property or services required for the performance of the work under this subcontract.

- B. Title to property.

Except as otherwise provided by the NREL Subcontract Administrator, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Subcontractor, for the cost of which the Subcontractor is entitled to be reimbursed as a direct item of cost under this subcontract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect, and to accept or reject, any item of such property. The Subcontractor shall make such disposition of rejected items as the NREL Subcontract Administrator shall direct. Title to other property, the cost of which is reimbursable to the Subcontractor under this subcontract, shall pass to and vest in the Government upon

- 1. Issuance for use of such property in the performance of this subcontract, or
- 2. Commencement of processing or use of such property in the performance of this subcontract, or
- 3. Reimbursement of the cost thereof by the Government, whichever first occurs.

Property furnished by the Government and property purchased or furnished by the Subcontractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall

such Government property or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

C. Identification.

To the extent directed by the NREL Subcontract Administrator, the Subcontractor shall identify Government property coming into the Subcontractor's possession or custody, by marking and segregating in such a way, satisfactory to the NREL Subcontract Administrator, as shall indicate its ownership by the Government.

D. Disposition.

The Subcontractor shall make such disposition of Government property which has come into the possession or custody of the Subcontractor under this subcontract as the NREL Subcontract Administrator may direct during the progress of the work or upon completion or termination of this subcontract. The Subcontractor may, upon such terms and conditions as the NREL Subcontract Administrator may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the NREL Subcontract Administrator and the Subcontractor as the fair value thereof. The amount received by the Subcontractor as the result of any disposition, or the agreed fair value of any such property acquired by the Subcontractor, shall be applied in reduction of costs allowable under this subcontract or shall be otherwise credited to account to the Government, as the NREL Subcontract Administrator may direct. Upon completion of the work or the termination of this subcontract, the Subcontractor shall render an accounting, as prescribed by the NREL Subcontract Administrator, of all Government property which had come into the possession or custody of the Subcontractor under this subcontract.

E. Protection of Government property management of high-risk property and classified materials.

1. The Subcontractor shall take all reasonable precautions, and such other actions as may be directed by the NREL Subcontract Administrator, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect Government property in the Subcontractor's possession or custody.
2. In addition, the Subcontractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management contained in the Federal Property Management regulations (41 CFR chapter 101), the Department of Energy Property Management regulations (41 CFR chapter 109), and other applicable regulations.
3. High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

F. Risk of loss of Government property.

1. (i) The Subcontractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following:
  - a. Willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel;
  - b. Failure of the Subcontractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the NREL Subcontract Administrator to safeguard such property under paragraph (E) of this clause; or
  - c. Failure of Subcontractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (I)(1) of this clause.
- (ii) If, after an initial review of the facts, the NREL Subcontract Administrator informs the Subcontractor that there is reason to believe that the loss, destruction of, or damage to the Government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the Subcontractor to show that the Subcontractor should not be required to compensate the Government for the loss, destruction, or damage.
2. In the event that the Subcontractor is determined liable for the loss, destruction or damage to Government property in accordance with (F)(1) of this clause, the Subcontractor's compensation to the Government shall be determined as follows:
  - (i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the NREL Subcontract Administrator shall determine the value of such property, consistent with all relevant facts and circumstances.
  - (ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the NREL Subcontract Administrator shall determine the value of such property, consistent with all relevant facts and circumstances.
3. The portion of the cost of insurance obtained by the Subcontractor that is allocable to coverage of risks of loss referred to in paragraph (F)(1) of this clause is not allowable.

G. Steps to be taken in event of loss. In the event of any damage, destruction, or loss to Government property in the possession or custody of the Subcontractor with a value above the threshold set out in the Subcontractor's approved property management system, the Subcontractor:

1. Shall immediately inform the NREL Subcontract Administrator of the occasion and extent thereof,
2. Shall take all reasonable steps to protect the property remaining, and
3. Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the NREL Subcontract Administrator.

The Subcontractor shall take no action prejudicial to the right of the Government to recover therefore, and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.

H. Government property for Government use only.

Government property shall be used only for the performance of this subcontract.

I. Property Management.

1. Property Management System.

- (i) The Subcontractor shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the subcontract. The Subcontractor's property management system shall be submitted to the NREL Subcontract Administrator for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management regulations and Department of Energy Property Management regulations, and such directives or instructions which the NREL Subcontract Administrator may from time to time prescribe.
- (ii) In order for a property management system to be approved, it must provide for:
  - a. Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;
  - b. Employee personal responsibility and accountability for Government-owned property;
  - c. Full integration with the Subcontractor's other administrative and financial systems; and
  - d. A method for continuously improving property management practices through the identification of best practices established by "best in class" performers.
- (iii) Approval of the Subcontractor's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (I)(2) of this clause.

2. Property Inventory.

- (i) Unless otherwise directed by the NREL Subcontract Administrator, the Subcontractor shall within six months after execution of the subcontract provide a baseline inventory covering all items of Government property.
- (ii) If the Subcontractor is succeeding another Subcontractor in the performance of this subcontract, the Subcontractor shall conduct a joint reconciliation of the property inventory with the predecessor Subcontractor.

The Subcontractor agrees to participate in a joint reconciliation of the property inventory at the completion of this subcontract. This information will be used to provide a baseline for the succeeding subcontract as well as information for closeout of the predecessor subcontract.

J. The term "Subcontractor's managerial personnel" as used in this clause means the Subcontractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of:

- 1. All or substantially all of the Subcontractor's business; or
- 2. All or substantially all of the Subcontractor's operations at any one facility or separate location to which this subcontract is being performed; or
- 3. A separate and complete major industrial operation in connection with the performance of this subcontract; or
- 4. A separate and complete major construction, alteration, or repair operation in connection with performance of this subcontract; or
- 5. A separate and discrete major task or operation in connection with the performance of this subcontract.

***(Note: Substitute the following paragraph (J) for nonprofit Subcontractors:)***

J. The term "Subcontractor's managerial personnel" as used in this clause means the Subcontractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of all or substantially all of:

- 1. The Subcontractor's business; or
- 2. The Subcontractor's operations at any one facility or separate location at which this subcontract is being performed; or
- 3. The Subcontractor's Government property system and/or a Major System Acquisition or Major Project as defined in DOE Order 4700.1 (Version in effect on effective date of subcontract).

- K. The Subcontractor shall include this clause in cost reimbursable lower-tier subcontracts.

**CLAUSE 45 - TAXES (APR 1984)**

***Derived from DEAR 970.5204-23 (FD)***

- A. The Subcontractor agrees to notify the NREL Subcontract Administrator of any State or local tax, fee, or charge levied or purported to be levied on or collected from the Subcontractor with respect to the subcontract work, any transaction thereunder, or property in the custody or control of the Subcontractor and constituting an allowable item of cost if due and payable, but which the Subcontractor has reason to believe, or the NREL Subcontract Administrator has advised the Subcontractor, is or may be inapplicable or invalid; \* and the Subcontractor further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by the NREL Subcontract Administrator. Any State or local tax, fee, or charge paid with the approval of the NREL Subcontract Administrator or on the basis of advice from the NREL Subcontract Administrator that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.

***\*Requirement for notice may be broadened to include all State and local taxes which may be claimed as allowable costs when considered to be appropriate.***

- B. The Subcontractor agrees to take such action as may be required or approved by the NREL Subcontract Administrator to cause any State or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take such action as may be required or approved by the NREL Subcontract Administrator to seek recovery of any payments made, including assignment to NREL/Government, or its designee of all rights to an abatement or refund thereof, and granting permission for NREL/Government to join with the Subcontractor in any proceedings for the recovery thereof or to sue for recovery in the name of the Subcontractor. If the NREL Subcontract Administrator directs the Subcontractor to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the Subcontractor for a tax, fee, or charge it has refrained from paying in accordance with this article, the procedures and requirements of the article entitled "Litigation and Claims" shall apply and the costs and expenses incurred by the Subcontractor shall be allowable items of costs, as provided in this subcontract, together with the amount of any judgment rendered against the Subcontractor.
- C. NREL/Government shall hold the Subcontractor harmless from penalties and interest incurred through compliance with this clause. All recoveries or credits in respect of the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of NREL/Government.

**CLAUSE 46 - PERMITS OR LICENSES (APR 1984)**

***Derived from DEAR 970.5204-29***

Except as otherwise directed by the NREL Subcontract Administrator, the Subcontractor shall procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory, and political subdivision in which the work under this subcontract is performed.

**CLAUSE 47 - ACCESS TO AND OWNERSHIP OF RECORDS (JUNE 1997)**

***Derived from DEAR 970.5204-79 (FD)***

***(Applies to cost reimbursement subcontracts)***

A. Government-owned records.

Except as provided in paragraph (B) of this clause, all records acquired or generated by the Subcontractor in its performance of this subcontract shall be the property of the Government and shall be delivered to the Government or otherwise disposed of by the Subcontractor either as the NREL Subcontract Administrator may from time to time direct during the process of the work or, in any event, as the NREL Subcontract Administrator shall direct upon completion or termination of the subcontract.

B. Subcontractor-owned records.

The following records are considered the property of the Subcontractor and are not within the scope of paragraph (A) of this clause. (The NREL Subcontract Administrator shall identify which of the following categories of records will be included in the clause.)

1. Employment-related records (such as workers' compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns, and other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/ health-related records and similar files), except for those records described by the subcontract as being maintained in Privacy Act systems of records.
2. Confidential Subcontractor financial information, and correspondence between the Subcontractor and other segments of the Subcontractor located away from the NREL facility (i.e., the Subcontractor's corporate headquarters);
3. Records relating to any procurement action by the Subcontractor, except for records that under 48 CFR (DEAR) 970.5204-9, Accounts, Records, and Inspection, are described as the property of the Government; and
4. Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and
5. [Reserved]

C. Subcontract completion or termination.

In the event of completion or termination of this subcontract, copies of any of the Subcontractor-owned records identified in paragraph (B) of this clause, upon the request of the Government, shall be delivered to DOE or its designees, including successor Subcontractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.

D. Inspection, copying, and audit of records.

All records acquired or generated by the Subcontractor under this subcontract in the possession of the Subcontractor, including those described at paragraph (B) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the Subcontractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the NREL Subcontract Administrator, the Subcontractor shall deliver such records to a location specified by the NREL Subcontract Administrator for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.

E. Applicability.

Paragraphs (B), (C), and (D) of this clause apply to all records without regard to the date or origination of such records.

F. Records retention standards.

Special records retention standards, described at DOE Order 1324.5B, Records Management Program and DOE Records Schedules (version in effect on effective date of subcontract), are applicable for the classes of records described therein, whether or not the records are owned by the Government or the Subcontractor. In addition, the Subcontractor shall retain individual radiation exposure records generated in the performance of work under this subcontract until DOE authorizes disposal. The Government may waive application of these record retention schedules, if, upon termination or completion of the subcontract, the Government exercises its right under paragraph (C) of this clause to obtain copies and delivery of records described in paragraphs (A) and (B) of this clause.

G. Flow down.

The Subcontractor shall include the requirements of this clause in all lower-tier subcontracts that are of a cost-reimbursement type if any of the following factors is present:

1. The value of the lower-tier subcontract is greater than \$2 million (unless specifically waived by the NREL Subcontract Administrator);
2. The NREL Subcontract Administrator determines that the lower-tier subcontract is, or involves, a critical task related to the subcontract; or
3. The lower-tier subcontract includes 48 CFR (DEAR) 970.5204-2, Integration of Environment, Safety, and Health into Work Planning and Execution, or similar clause.

**CLAUSE 48 - ACCESS SECURITY (SPECIAL)(APR 1999)**

A. Access to NREL operated facilities is controlled in accordance with the DOE's requirements. The Subcontractor shall ensure that any of its, or its lower-tier subcontractors, officers, employees, or

agents be specifically authorized site access by an NREL employee, and identified, badged, and registered by NREL Security prior to entering any NREL operated facility.

- B. The Subcontractor shall further ensure that any of its, or its lower-tier subcontractors, officers, employees, or agents who are not U.S. citizens or U.S. permanent residents and who will perform subcontract work on NREL operated facilities for a total of thirty (30) calendar days or greater, or who are citizens of a DOE designated sensitive country, or who work for a company based in a sensitive country, or who are stateless persons, submit a completed DOE Form IA 473 to NREL six to eight weeks before access is required. Access shall be subject to DOE approval. Any such person denied access by DOE shall not be assigned by the Subcontractor to work at NREL operated facilities.
- C. The Subcontractor shall provide to the Subcontract Administrator, prior to the initiation of work, evidence, including visa types and expiration dates, that legally sufficient work permits have been obtained from the U.S. Immigration and Naturalization Service, and such permits are properly maintained, for any of its, or its lower-tier subcontractors officers, employees, or agents who are not U.S. citizens or U.S. permanent residents and who will perform subcontract work at NREL operated facilities.
- D. Further, after the Subcontractor, or its lower-tier subcontractors, has commenced subcontract work, the Subcontractor shall provide to the Subcontract Administrator similar advance notice, including visa types and expiration dates, for all subsequently assigned individuals who are not U.S. citizens or U.S. permanent residents who will perform subcontract work at NREL operated facilities.
- E. NREL reserves the right to revoke site access authorization for any person violating NREL or DOE safety and security policies and procedures.
- F. As a condition of entry to NREL premises, the Subcontractor agrees to permit NREL security personnel to search its, and its lower-tier subcontractors, officers, employees, or agents vehicles, packages, tool boxes, or other containers for the purpose of preventing prohibited articles access to NREL premises or to detect or deter the unauthorized removal of Government property from NREL.
- G. Prohibited articles include cameras, copying machines, reproduction devices, recording devices, radio transmitters, firearms, explosive devices, incendiary devices, dangerous weapons or materials, controlled substances (illegal drugs), or alcoholic beverages.
- H. The Subcontractor shall include this article, including this Paragraph H, in all lower-tier subcontracts involving work at NREL operated facilities.